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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,782	05/02/2001	Robert D. Hutchison	11-902	4594

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

15

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-15

Office Action Summary

Application No.

09/846,782

Applicant(s)

HUTCHISON, ROBERT D.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 13-38 is/are rejected.
- 7) ☒ Claim(s) 2 and 10-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Amendment B, submitted as Paper No. 13 on May 14, 2003, has been entered. Claims 1, 4, 10, 20, and 21 have been amended, while claims 33-38 have been added. Thus, the pending claims are 1-38.

2. Amendment B is sufficient to withdraw the 102 and 103 rejection based upon the cited Oakey patent as a primary reference, as set forth in sections 2, 5, 6, 8, and 10 of the last Office Action. Specifically, Oakey does not teach the presently claimed discrete portions of the primary backing and discrete portions of the tuft backstitches.

3. Applicant's arguments with respect to claims 2 and 10-12 have been found persuasive (Amendment B, page 11, 1st paragraph). In particular, one would not be motivated to include a UV stabilizer in a conventional primary backing since said backing is not typically exposed to sunlight, but rather said backing is protected by the face yarns of the carpet. Hence, the rejections of said claims are hereby withdrawn.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-5, 9, 20, 21, 23, 24, and 27 stand rejected under 35 USC 102(b) as being anticipated by US 4,563,378 issued to Roth, as set forth in section 3 of the last Office Action.

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Applicant amends independent claims 1, 20, and 21 to clarify that the primary backing has discrete non-tufted parts which are exposed to form a wear surface portion and tufted backstitches forming the remaining wear surface portion. However, said amendment is insufficient to overcome the Roth reference since Roth clearly shows part of the primary backing which are not tufted, wherein the warp and weft yarns of said primary backing are exposed as part of the wear surface (see Figures 3 and 4, reference numbers 17 and 19). Hence, the 102 rejection of said claims is hereby maintained.

6. New claims 33-38 are rejected under 35 USC 102(b) as being anticipated by US 4,563,378 issued to Roth.

Said new claims are also anticipated by the patent since Roth shows areas of the primary backing which are devoid of tufts and which are exposed to the surface.

Claim Rejections - 35 USC § 103

7. In the alternative, claims 1, 3-5, 9, 20, 21, 23, 24, 27, and 33-38 are rejected under 35 USC 103(a) as being unpatentable over US 4,563,378 issued to Roth.

In the alternative, if applicant intends the claims to encompass two discrete wear portions to be distributed in a predetermined pattern, it would have been obvious to one skilled in the art to modify the Roth invention in order to produce an aesthetically pleasing design and/or texture. Therefore, said claims are rejected as being obvious over the cited Roth patent.

8. Claims 15 and 16 stand rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference, as set forth in section 5 of the last Office Action.

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9. Claims 6, 7, 13, 14, 25, and 29 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference in view of the cited Oakey reference, as set forth in sections 7 and 9 of the last Office Action. (Note claims 6 and 25 were inadvertently omitted from the rejection set forth in section 7.)

10. Claims 22 and 28 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference in view of the cited Oakey reference.

Although claims 22 and 28 include limitations to the primary backing having a UV stabilizer, applicant's arguments are unpersuasive with respect to said claims. In particular, the UV limitation is a structural limitation in a method claim. As such, to be entitled to weight in method claims, the recited structure limitation must affect the method in a manipulative sense, and not amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 135 USPQ 31. Hence, said claim are rejected over the cited prior art.

11. Claims 8 and 26 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference.

Although Roth exemplifies cut loops, it would have been obvious to one of ordinary skill in the art to not cut the loops inherently formed by tufting in order to save on the process step of cutting said loops. Therefore, claims 8 and 26 are rejected as being obvious over the cited Roth patent.

12. Claims 17 and 30 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference.

Although Roth does not explicitly teach the claimed precoat of PVC and main coat of PVC with a fiberglass stabilizer therein, it would have been obvious to one of ordinary

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skill in the art to employ the presently claimed backings since said backings are well-known in the art. Applicant is hereby given Official Notice of this fact. Hence, said claims are obvious since it is within the general skill of a worker in the art to select a known material (i.e., backing layers) on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Therefore, claims 17 and 30 are rejected.

13. Claims 18, 19, 31, and 32 are rejected under 35 USC 103(a) as being unpatentable over the cited Roth reference.

Although Roth exemplifies carpets for vehicles, it would have been obvious to one of ordinary skill to employ the carpet as broadloom carpet and/or to employ the carpet as modular carpet, rather than cutting it for said vehicles. Motivation to do so would be to expand the number of applications of the inventive carpet. Therefore, claims 18, 19, 31, and 32 are rejected.

Response to Arguments

14. Applicant's arguments filed with Amendment B have been fully considered but they are not persuasive. In particular, applicant argues that Roth does not disclose use of the primary backing as part of the overall exposed design of the floor covering. In response, as noted above, it is asserted that Roth clearly shows portions of the primary backing not tufted. See Figures 3 and 4, reference number 19 and the bottom two drawings of Figure 5, wherein a portion of the primary backing is exposed to the wear surface.

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Allowable Subject Matter

15. Claims 2 and 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. as noted above, the prior art does not teach or suggest the presently claimed covering structure, wherein the primary backing is a woven fabric containing a UV stabilizer.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
July 26, 2003